

107TH CONGRESS
2D SESSION

H. R. 4889

To amend title XI of the Social Security Act to improve patient safety.

IN THE HOUSE OF REPRESENTATIVES

JUNE 6, 2002

Mrs. JOHNSON of Connecticut (for herself, Mr. THOMAS, Mr. HOUGHTON, Mr. FLETCHER, Mrs. MORELLA, Mr. HAYWORTH, Mr. WELLER, and Mr. CAMP) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend title XI of the Social Security Act to improve patient safety.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE; TABLE OF CONTENTS.**

4 (a) SHORT TITLE.—This Act may be cited as the
5 “Patient Safety Improvement Act of 2002”.

6 (b) TABLE OF CONTENTS.—The table of contents of
7 this Act is as follows:

Sec. 1. Short title; table of contents.
Sec. 2. Patient safety improvements.

“PART D—PATIENT SAFETY IMPROVEMENTS

“Sec. 1181. Voluntary reporting of patient safety data; definitions.

“Sec. 1182. Confidentiality and peer review protections.

“Sec. 1183. Reduction of medical errors using non-identifiable patient safety data reported to patient safety organization.

“Sec. 1184. Technical assistance.

“Sec. 1185. Interoperability standards for health care information technology systems.

Sec. 3. Medical Information Technology Advisory Board.

1 SEC. 2. PATIENT SAFETY IMPROVEMENTS.

2 (a) IN GENERAL.—Title XI of the Social Security Act
3 is amended by adding at the end the following new part:

4 “PART D—PATIENT SAFETY IMPROVEMENTS

5 “VOLUNTARY REPORTING OF PATIENT SAFETY DATA;

6 DEFINITIONS

7 “SEC. 1181. (a) VOLUNTARY REPORTING.—The re-
8 porting of patient safety data by health care providers
9 under this part is voluntary.

10 “(b) DEFINITIONS.—In this part:

11 “(1) PATIENT SAFETY DATA.—The term ‘pa-
12 tient safety data’ means—

13 “(A) any data, reports, records, memo-
14 randa, analyses, deliberative work, statements,
15 root cause analyses, or quality improvement
16 processes that could result in improved patient
17 safety or health care quality, that are—

18 “(i) collected or developed by a health
19 care provider for the purpose of reporting
20 to a patient safety organization;

1 “(ii) reported to a patient safety orga-
2 nization for patient safety or quality im-
3 provement processes;

4 “(iii) requested by a patient safety or-
5 ganization (including the contents of such
6 request);

7 “(iv) reported to a health care pro-
8 vider by a patient safety organization;

9 “(v) collected or developed by a pa-
10 tient safety organization; or

11 “(vi) reported among patient safety
12 organizations; or

13 “(B) information related to corrective ac-
14 tions taken in response to patient safety data;
15 for the purpose of improving patient safety, health
16 care quality, or health care outcomes.

17 “(2) PATIENT SAFETY ORGANIZATION.—

18 “(A) IN GENERAL.—The term ‘patient
19 safety organization’ means a private or public
20 organization or component thereof that certifies
21 to the Secretary that it performs each of the ac-
22 tivities described in subparagraph (B) (which
23 are necessary for the proper management and
24 administration of such organization or compo-

1 nent) and meets the conflict of interest stand-
2 ard under subparagraph (C).

3 “(B) ACTIVITIES DESCRIBED.—The activi-
4 ties referred to in subparagraph (A) are the fol-
5 lowing:

6 “(i) The conduct, as its primary activ-
7 ity, of efforts to improve patient safety and
8 the quality of health care delivery by as-
9 sisting health care providers that report to
10 such organizations.

11 “(ii) The collection and analysis of pa-
12 tient safety data that are voluntarily sub-
13 mitted by a health care provider.

14 “(iii) The development and dissemina-
15 tion of information to health care providers
16 with respect to improving patient safety,
17 such as recommendations, protocols, or in-
18 formation regarding best practices.

19 “(iv) The utilization of patient safety
20 data to carry out activities under this sub-
21 paragraph and for the purposes of encour-
22 aging a culture of safety and of providing
23 direct feedback and assistance to health
24 care providers to effectively minimize pa-
25 tient risk.

1 “(v) The maintenance of confiden-
2 tiality with respect to individually identifi-
3 able health information.

4 “(vi) The provision of appropriate se-
5 curity measures with respect to patient
6 safety data.

7 “(C) CONFLICT OF INTEREST STAND-
8 ARD.—The conflict of interest standard referred
9 to in subparagraph (A) for a patient safety or-
10 ganization, with respect to a health care pro-
11 vider, is that the organization does not use pa-
12 tient safety data submitted under this part to
13 take regulatory or enforcement actions it other-
14 wise performs (or is responsible for performing)
15 in relation to such provider.

16 “(3) HEALTH CARE PROVIDER.—The term
17 ‘health care provider’ means—

18 “(A) a provider of services (as defined in
19 section 1861(u), and including a hospital,
20 skilled nursing facility, home health agency, and
21 hospice program) that provides services for
22 which payment may be made under part A of
23 title XVIII;

24 “(B) a health care entity or individual that
25 furnishes medical or other health services (as

defined in section 1861(s)) or other services described in section 1832(a)(2) for which payment may be made under part B of such title, including a physician (as defined in section 1861(r)); and

“(C) a Medicare+Choice organization under part C of such title.

“CONFIDENTIALITY AND PEER REVIEW PROTECTIONS

“SEC. 1182. (a) IN GENERAL.—Notwithstanding any other provision of law, and subject to subsection (b), patient safety data shall be privileged and confidential and shall not be—

“(1) subject to a civil, criminal, or administrative subpoena;

“(2) subject to discovery in connection with a civil, criminal, or administrative proceeding;

“(3) disclosed pursuant to section 552 of title 5, United States Code (commonly known as the Freedom of Information Act) or any other similar Federal or State law;

“(4) admitted as evidence or otherwise disclosed in any civil, criminal, or administrative proceeding; or

“(5) utilized in an adverse employment action or in the evaluation or decisions made in relation to accreditation, certification, credentialing or licensing

1 of an individual, that is based on such individual's
2 participation in the development, collection, report-
3 ing, or storage of patient safety data.

4 “(b) DISCLOSURE REQUIREMENTS.—Nothing in this
5 section shall be construed to prohibit one or more of the
6 following disclosures:

7 “(1) Disclosures by a health care provider in
8 complying with authorized requests for the provision
9 of patient safety information (such as a patient's
10 medical record or other relevant information) that is
11 in the control of such a health care provider and
12 that has been developed, maintained, or exists sepa-
13 rately from the process by which the health care pro-
14 vider collects or develops information for reporting
15 to a patient safety organization.

16 “(2) Disclosures by a health care provider or
17 patient safety organization of patient safety data as
18 part of a disciplinary proceeding relating to a health
19 care provider, or a criminal proceeding, if such a
20 disclosure of such patient safety data is—

21 “(A) material to the proceeding;

22 “(B) within the public interest; and

23 “(C) not available from any other source.

24 “(3) Disclosures by a health care provider or
25 patient safety organization of relevant information

1 to the Food and Drug Administration, or to a per-
2 son that is subject to the jurisdiction of such Admin-
3 istration, with respect to an Administration-regu-
4 lated product or activity for which that entity has
5 responsibility, for the purposes of activities related
6 to the quality, safety, or effectiveness of such Ad-
7 ministration-regulated product or activity.

8 “(4) Disclosures by a health care provider or
9 patient safety organization of information to which
10 subsection (a) applies to carry out activities de-
11 scribed in section 1181(b)(2)(B).

12 “(c) PENALTY.—It is unlawful for any person to dis-
13 close any patient safety data in violation of the provisions
14 of this section. Any person violating such provisions shall
15 be subject to the same sanctions under section 1160(c)
16 as a person who discloses any information described in
17 section 1160(a).

18 “(d) NO LIMITATION OF OTHER PRIVILEGES.—
19 Nothing in this section shall be construed to limit other
20 privileges that are available under Federal or State laws
21 that provide greater peer review or confidentiality protec-
22 tions than the peer review and confidentiality protections
23 provided for in this section.

24 “(e) RULE OF CONSTRUCTION.—Nothing in this sec-
25 tion shall be construed to alter or affect the implementa-

tion of any provision of section 264(c) of the Health Insurance Portability and Accountability Act of 1996 (Public Law 104–191; 110 Stat. 2033) or any regulation promulgated under such section.

“(f) TREATMENT OF RESIDUAL PATIENT SAFETY DATA.—In the case of a patient safety organization which no longer qualifies as a patient safety organization under section 1181(b)(2) that received patient safety data from a health care provider, the organization shall return the data to the provider, if practicable, or destroy the data.

“REDUCTION OF MEDICAL ERRORS USING AGGREGATED NON-IDENTIFIABLE PATIENT SAFETY DATA REPORTED TO PATIENT SAFETY ORGANIZATION

“SEC. 1183. (a) ANALYSIS OF PATTERNS OF MEDICAL ERRORS.—

“(1) IN GENERAL.—The Secretary shall establish one or more mechanisms—

“(A) to analyze aggregate non-identifiable patient safety data (as defined in paragraph (3))—

“(i) to identify patterns of medical errors; and

“(ii) to disseminate to health care providers methods that can be systematically employed; and

1 “(B) to analyze system changes adopted by
2 patient safety organizations and health care
3 providers;
4 in order to reduce such errors and improve patient
5 safety and health care quality.

6 “(2) PERIODIC REPORTS.—The Secretary shall
7 periodically report to Congress on mechanisms es-
8 tablished under paragraph (1) and on changes that
9 should be made to the provisions of this part in
10 order to best promote system-wide improvements in
11 patient safety and quality.

12 “(3) NON-IDENTIFIABLE PATIENT SAFETY
13 DATA DEFINED.—For purposes of this section, the
14 term ‘non-identifiable patient safety data’ means pa-
15 tient safety data voluntarily reported to a patient
16 safety organization under this part that are pre-
17 sented in a form and manner that prevent the iden-
18 tification of any health care provider, patient, and
19 the reporter of the data.

20 “(b) CONFIDENTIALITY.—Any patient safety data
21 that are used under this section shall be privileged and
22 confidential in the same manner as provided under section
23 1182 with respect to such data reported to a patient safety
24 organization.

1 “TECHNICAL ASSISTANCE

2 “SEC. 1184. The Secretary may provide technical as-
3 sistance to patient safety organizations in providing rec-
4 ommendations and advice to health care providers submit-
5 ting patient safety data under this part. Such assistance
6 shall include advice with respect to methodology, commu-
7 nication, data collection, security, and confidentiality con-
8 cerns.

9 “INTEROPERABILITY STANDARDS FOR HEALTH CARE
10 INFORMATION TECHNOLOGY SYSTEMS

11 “SEC. 1185. (a) IN GENERAL.—By not later than 2
12 years after the date of the enactment of this part, the Sec-
13 retary shall develop (and shall periodically review and up-
14 date) voluntary, national standards that promote the
15 interoperability of health care information technology sys-
16 tems across all health care settings.

17 “(b) CONSULTATION.—The Secretary shall develop
18 and update such standards in consultation with—

19 “(1) the National Committee for Vital and
20 Health Statistics,

21 “(2) the organizations referred to in section
22 1172(c)(3)(B), and

23 “(3) the Medical Information Technology Advi-
24 sory Board (established under section 3 of the Pa-
25 tient Safety Improvement Act of 2002).

1 “(c) DISSEMINATION.—The Secretary shall provide
2 for the dissemination of the standards developed and up-
3 dated under this section.”.

4 **SEC. 3. MEDICAL INFORMATION TECHNOLOGY ADVISORY**
5 **BOARD.**

6 (a) ESTABLISHMENT.—

7 (1) IN GENERAL.—Not later than 3 months
8 after the date of the enactment of this Act, the Sec-
9 retary of Health and Human Services (in this sec-
10 tion referred to as the “Secretary”) shall appoint an
11 advisory board to be known as the “Medical Infor-
12 mation Technology Advisory Board” (in this section
13 referred to as the “MITAB”).

14 (2) CHAIRMAN; VICE CHAIRMAN.—The Sec-
15 retary shall designate one member as chairman and
16 one as vice chairman. The chairman shall be an indi-
17 vidual affiliated with an organization having exper-
18 tise creating American National Standards Institute
19 (ANSI) accepted standards in health care informa-
20 tion technology.

21 (b) COMPOSITION.—

22 (1) IN GENERAL.—The MITAB shall consist of
23 not more than 17 members that include—

24 (A) experts from the fields of medical in-
25 formation, information technology, medical con-

1 tinuous quality improvement, medical records
2 security and privacy, individual and institu-
3 tional health care clinical providers, health re-
4 searchers, and health care purchasers;

5 (B) one or more staff experts from the
6 Centers for Medicare & Medicaid Services;

7 (C) one or more staff experts from the
8 Agency for Healthcare Research and Quality;

9 (D) one or more staff experts from the In-
10 stitute of Medicine of the National Academy of
11 Sciences;

12 (E) representatives of private organizations
13 with expertise in medical infomatics;

14 (F) one or more staff experts of a public
15 health agency;

16 (G) a representative of a teaching hospital;
17 and

18 (H) one or more representatives of the
19 health care information technology industry.

20 (2) TERMS OF APPOINTMENT.—The term of
21 any appointment under paragraph (1) to the
22 MITAB shall be for the life of the MITAB.

23 (3) MEETINGS.—The MITAB shall meet at the
24 call of its chairman or a majority of its members.

1 (4) VACANCIES.—A vacancy on the MITAB
2 shall be filled in the same manner in which the origi-
3 nal appointment was made not later than 30 days
4 after the MITAB is given notice of the vacancy and
5 shall not affect the power of the remaining members
6 to execute the duties of the MITAB.

7 (5) COMPENSATION.—Members of the MITAB
8 shall receive no additional pay, allowances, or bene-
9 fits by reason of their service on the MITAB.

10 (6) EXPENSES.—Each member of the MITAB
11 shall receive travel expenses and per diem in lieu of
12 subsistence in accordance with sections 5702 and
13 5703 of title 5, United States Code.

14 (c) DUTIES.—

15 (1) INITIAL REPORT.—No later than 30 months
16 after the date of the enactment of this Act, the
17 MITAB shall submit to Congress and the Secretary
18 a report on the following:

19 (A) The best current practices in medical
20 information technology.

21 (B) Methods of implementing—

22 (i) health care information technology
23 interoperability standardization; and

24 (ii) records security

1 (C) A recommendation for a common lexi-
2 con for computer technology.

3 (2) SUBSEQUENT REPORTS.—During each of
4 the 2 years after the year in which the report is sub-
5 mitted under paragraph (1), the MITAB shall sub-
6 mit to Congress and the Secretary an annual report
7 relating to additional recommendations, best prac-
8 tices, results of information technology improve-
9 ments, analyses of private sector efforts to imple-
10 ment the interoperability standards established in
11 section 1185 of the Social Security Act, and such
12 other matters as may help ensure the most rapid
13 dissemination of best practices in health care infor-
14 mation technology.

15 (d) GOALS.—The goals described in this subsection
16 are the following:

17 (1) To maximize positive outcomes in clinical
18 care—

19 (A) by providing decision support for diag-
20 nosis and care; and

21 (B) by assisting in the emergency treat-
22 ment of a patient presenting at a facility where
23 there is no medical record of the patient.

24 (2) To contribute to (and be consistent with)
25 the development of the patient assessment instru-

1 ment provided for under section 545 of the Medi-
2 care, Medicaid, and SCHIP Benefits Improvement
3 and Protection Act of 2000 (as enacted into law by
4 section 1(a)(6) of Public Law 106–554), and to as-
5 sist in minimizing the need for new and different
6 records as patients move from provider to provider.

7 (3) To reduce or eliminate the need for redun-
8 dant records, paperwork, and the repetitive taking of
9 patient histories and administering of tests.

10 (4) To minimize medical errors, such as admin-
11 istration of contraindicated drugs.

12 (5) To promote and ensure access to best prac-
13 tices of medicine through support of research across
14 institutions.

15 (6) To provide a compatible information tech-
16 nology architecture that facilitates future quality
17 and cost-saving needs and that avoids the financing
18 and development of information technology systems
19 that are not readily compatible.

20 (e) STAFF AND SUPPORT SERVICES.—

21 (1) EXECUTIVE DIRECTOR.—

22 (A) APPOINTMENT.—The Chairman shall
23 appoint an executive director of the MITAB.

1 (B) COMPENSATION.—The executive direc-
2 tor shall be paid the rate of basic pay for level
3 V of the Executive Schedule.

4 (2) STAFF.—With the approval of the MITAB,
5 the executive director may appoint such personnel as
6 the executive director considers appropriate.

7 (3) APPLICABILITY OF CIVIL SERVICE LAWS.—
8 The staff of the MITAB shall be appointed without
9 regard to the provisions of title 5, United States
10 Code, governing appointments in the competitive
11 service, and shall be paid without regard to the pro-
12 visions of chapter 51 and subchapter III of chapter
13 53 of such title (relating to classification and Gen-
14 eral Schedule pay rates).

15 (4) EXPERTS AND CONSULTANTS.—With the
16 approval of the MITAB, the executive director may
17 procure temporary and intermittent services under
18 section 3109(b) of title 5, United States Code.

19 (5) PHYSICAL FACILITIES.—The Administrator
20 of the General Services Administration shall locate
21 suitable office space for the operation of the
22 MITAB. The facilities shall serve as the head-
23 quarters of the MITAB and shall include all nec-
24 essary equipment and incidentals required for the
25 proper functioning of the MITAB.

1 (f) POWERS.—

2 (1) HEARINGS AND OTHER ACTIVITIES.—For
3 the purpose of carrying out its duties, the MITAB
4 may hold such hearings and undertake such other
5 activities as the MITAB determines to be necessary
6 to carry out its duties.

7 (2) DETAIL OF FEDERAL EMPLOYEES.—Upon
8 the request of the MITAB, the head of any Federal
9 agency is authorized to detail, without reimburse-
10 ment, any of the personnel of such agency to the
11 MITAB to assist the MITAB in carrying out its du-
12 ties. Any such detail shall not interrupt or otherwise
13 affect the civil service status or privileges of the
14 Federal employee.

15 (3) TECHNICAL ASSISTANCE.—Upon the re-
16 quest of the MITAB, the head of a Federal agency
17 shall provide such technical assistance to the
18 MITAB as the MITAB determines to be necessary
19 to carry out its duties.

20 (4) USE OF MAILS.—The MITAB may use the
21 United States mails in the same manner and under
22 the same conditions as Federal agencies and shall,
23 for purposes of the frank, be considered a commis-
24 sion of Congress as described in section 3215 of title
25 39, United States Code.

1 (5) OBTAINING INFORMATION.—The MITAB
2 may secure directly from any Federal agency infor-
3 mation necessary to enable it to carry out its duties,
4 if the information may be disclosed under section
5 552 of title 5, United States Code. Upon request of
6 the Chairman of the MITAB, the head of such agen-
7 cy shall furnish such information to the MITAB.

8 (6) ADMINISTRATIVE SUPPORT SERVICES.—
9 Upon the request of the MITAB, the Administrator
10 of General Services shall provide to the MITAB on
11 a reimbursable basis such administrative support
12 services as the MITAB may request.

13 (7) PRINTING.—For purposes of costs relating
14 to printing and binding, including the cost of per-
15 sonnel detailed from the Government Printing Of-
16 fice, the MITAB shall be deemed to be a committee
17 of the Congress.

18 (g) TERMINATION.—The MITAB shall terminate 30
19 days after the date of submission of its final report under
20 subsection (c)(2).

21 (h) AUTHORIZATION OF APPROPRIATIONS.—There
22 are authorized to be appropriated to the Secretary of
23 Health and Human Services such sums as are necessary
24 to carry out this section.

○